

NO. 47926-5-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

MICHAEL S. WILLIAMS,

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR CLALLAM COUNTY

The Honorable Christopher Melly, Judge

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred by imposing drug court costs and interagency drug fund costs that are not authorized by statute.¹

2. The trial court erred by imposing legal financial obligations without first determining appellant Michael Williams' ability to pay.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. A court exceeds its authority by ordering payment of legal financial obligations beyond what is permitted by statute. Where the court ordered Mr. Williams to pay \$500.00 into Clallam County Drug Court and \$500.00 into the drug enforcement fund of Olympic Peninsula Narcotics Enforcement Team (OPNET), did the court exceed its statutory authority? Assignment of Error 1.

2. Did the trial court err by imposing legal financial obligations without first determining Mr. Williams' ability to pay?

C. STATEMENT OF THE CASE

On June 22, 2015, officers from the Sequim (Washington) Police Department were dispatched to the local Wal-Mart store following a report of a suspected shoplifter attempting to take food items from the store. Clerk's Papers (CP) 53. The alleged shoplifter—identified as Michael

¹This issue was raised in *State v. Allen*, Cause No. 47487-5-II currently pending before

Williams—was contacted by Wal-Mart loss prevention personnel outside the store. CP 53. They reported to police that after Mr. Williams left Wal-Mart he threw the items back inside the store, pushed his way past the security officers, and then began running. CP 53.

Police arrived and detained Mr. Williams after he was located in the parking lot of a nearby Jack in the Box. CP 53. After being advised of his *Miranda* rights, Mr. Williams told police that he took a package of hamburgers and Icee beverages from Wal-Mart, and that after he was contacted outside the store by security he threw the items back into the store's garden center area and began walking away. CP 53-54. The food items were worth approximately \$27.00 and police reported that Mr. Williams stated that he took them because he was "just trying to get food." CP 54.

Mr. Williams was placed under arrest for assault and third degree theft and transported to the Sequim Police Department. CP 54. During a search incident to arrest in a holding cell Mr. Williams produced a glass vial which he said contained heroin. CP 54. A brown powdery substance in a small baggie inside the vial field tested positive for heroin. CP 55.

Mr. Williams was charged by information filed June 25, 2015 in

this Court.

Clallam County Superior Court with possession of a controlled substance (heroin), assault in the fourth degree, and theft in the third degree. CP 1.

On August 18, 2015, Mr. Williams pleaded guilty to possession of heroin as charged in Count I. Report of Proceedings² (RP) (8/18/15) at 3-5; CP 33-41. The State moved to dismiss Counts II and III, which the court granted. RP (8/18/15) at 8. The Statement on Plea of Guilty sets out the State's offer, which was written as follows:

The prosecuting attorney will make the following recommendation to the judge: A sentence of 30 days, with all 30 days converted to community service work. In addition, pay legal financial obligations of \$100 DNA fee; \$500 victim's assessment; \$500 attorney's fees; \$200 court costs; \$1000 drug fine; jail medical and incidental costs, if any; pay respondent for dismissed count 3, if any. Obtain a substance abuse evaluation and comply with recommended treatment. Do not consume alcohol or use non-prescribed controlled substances. This is an agreed recommendation. Supervision by Friendship Diversion up to 12 months. This resolves all charges against me from this investigation. The State agrees to dismiss counts 2 and 3 with prejudice.

CP 36.

At sentencing, the court imposed 30 days, to be converted to 240 hours of community service, and six months of community custody to be monitored by Friendship Diversion Services. RP (8/18/15) at 9-10; CP 23-25.

²The record of proceedings consists of one volume and is designated as follows: RP June 23, 2015; June 25, 2015; July 10, 2015 (arraignment); August 6, 2015; August 18, 2015 (change of plea and sentencing).

The court also ordered Mr. Williams to obtain a chemical dependency evaluation and successfully complete treatment. RP (8/18/15) at 8; CP 25.

As part of the ordered legal financial obligations, the court imposed a \$1000.00 assessment, to be divided between the Clallam County Drug Court and the drug enforcement fund of the Olympic Peninsula Narcotics Enforcement Team (OPNET). CP 27. The \$1000.00 assessment is allocated in the Judgment and Sentence as follows:

\$	Restitution to:	
\$	Restitution to:	
\$	Restitution to:	
\$500	Court ordered assessment to:	Clallam County Drug Court
\$500	Statutory assessment:	Drug enforcement fund of Olympic Peninsula Narcotics Enforcement Team (OPNET) County Code 118.000.010 Bars Code 351.50.01 <input type="checkbox"/> VUSCA chapter 69.50 RCW, <input type="checkbox"/> VUSCA additional fine deferred due to indigency

CP 27.

Mr. Williams' counsel, Alex Stalker, objected to the division of the \$1000.00 drug fine, and also asked if the court found that Mr. Williams was indigent and if fine was waived. RP (8/18/15) at 10. In noting his objection, the following exchange took place:

MR STALKER: So, the way this is filled out it indicates that there's supposed to be \$500.00 to drug court and \$500.00 to

OPNET. The way this is filled out, that's not my recollection of what the court actually ordered.

THE COURT: The request was for \$1000.00 wasn't it?

MR. STALKER: Drug fine. That's not my recollection of what the court actually ordered.

THE COURT: In splitting it off. To the best of my knowledge, I mean that's the practice that's been employed and splitting it off to the best of my knowledge, I mean, that's the practice that's been employed.

MR. STALKER: So, is the court finding my client indigent and waiving the drug fine?

THE COURT: No.

MR. STALKER: Okay, then I don't know what basis there would be to waive the drug fine and impose it to those institutions.

THE COURT: I wasn't waiving the drug fine. That was not my intent.

MR. STALKER: Okay.

Well, I guess the issue is a drug fine is separate than what's usually done. Usually, there is no provision within the SRA to substitute an assessment to drug court and an assessment to OPNET is defined, so I'm not really sure on what statutory basis the court would be doing that.

THE COURT: I confess that I don't have a statutory basis. I know that it's a practice that's been in use around here for a long time and quite honestly we're looking at things that have to be clarified or modified and we'll just add this to the list, but right now I'm going to impose the \$1000.00, \$500.00 to each of those funds and sort it out, I guess down the pike. In the end it doesn't really matter if it goes to one agency or another as long as he's paying \$1000.00.

RP (8/18/15) at 10-11.

Timely notice of appeal was filed August 20, 2015. CP 11. This appeal follows.

/ / /

D. ARGUMENT

1. THE TRIAL COURT EXCEEDED ITS
AUTHORITY WHEN IT IMPOSED LEGAL
FINANCIAL OBLIGATIONS NOT
AUTHORIZED BY THE LEGISLATURE.

Where the court imposes a sentence other than that authorized by the Sentencing Reform Act, the court acts without statutory authority and the sentence may be appealed. *State v. Ford*, 137 Wn.2d 472, 477-78, 973 P.2d 452 (1999) (citing *State v. Moen*, 129 Wn.2d 535, 543-48, 919 P.2d 69 (1996)); *State v. Parker*, 132 Wn.2d 182, 188- 89, 937 P.2d 575 (1997). This court has authority to correct an erroneous sentence. *State v. Broadaway*, 133 Wn.2d 118, 136, 942 P.2d 363 (1997).

a. Standard of review

Reviewing courts assess constitutional issues and questions of law *de novo*. *State v. Zillyette*, 178 Wn.2d 153,161, 307 P.3d 712 (2013); *State v. Jones*, 175 Wn. App. 87, 95,303 P.3d 1084 (2013).

b. The court exceeded its authority by ordering Mr.
Williams to pay \$500.00 to the county drug fund and
\$500.00 into the Olympic Peninsula Narcotics
Enforcement Team

A court's authority to impose costs derives from statute. *State v. Hathaway*, 161 Wn. App. 634, 651-653, 251 P.3d 253 (2011) *review denied*, 172 Wn.2d 1021, 268 P.3d 224 (2011). A court exceeds its authority by

ordering an offender to pay legal financial obligations (LFOs) beyond what the legislature has authorized. RCW 9.94A.760.

Under RCW 9.94A.760(1) the Legislature has generally authorized the courts to impose "legal financial obligations" as part of a felony sentence. This provision states:

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

RCW 9.94A.760(1).

A legal financial obligation is "a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include ... county or interlocal drug funds." RCW 9.94A.030(31). Any contribution to a drug fund must be for a drug-related crime and

commensurate with the costs of the investigation. *State v. Hunter*, 102 Wn.App. 630, 640, 9 P.3d 872 (2000).

Here, the trial court exceeded its authority when it imposed payment into the county drug court fund and OPNET drug enforcement fund. The court may order an offender to pay "expenses specially incurred by the state in prosecuting the defendant." RCW 10.01.160(2). The court may not order an offender to pay LFOs that are not authorized by statute. *Hathaway*, 161 Wn. App. at 651-653. In this case, the court exceeded its authority by ordering Mr. Williams to pay \$500.00 to the drug court and \$500.00 to the interlocal drug team.

Under RCW 9.94A.030(31) there is authorization for the imposition of fines or assessments payable to interlocal drug funds, but any contribution to a drug fund requires that the defendant must have been convicted of a "drug-related crime," and that the costs imposed must be commensurate with or related to the costs of the investigation. *State v. Hunter*, 102 Wn.App. 630, 640, 9 P.3d 872 (2000).

In *Hunter* Division One of this Court considered several challenges to a trial court's authority to impose a drug fund contribution under former RCW 9.94A.030. Hunter had been convicted by *Alford* plea of delivery of methamphetamine and delivery of cocaine. *Hunter*, 102 Wn.App. at 632.

RCW 9.94A.030(31) defines "[c]ourt-ordered legal financial obligations" to include payments to "county or interlocal drug funds." The Court noted that, "although the statute does not expressly limit the imposition of a drug fund contribution to drug-related crimes, we find this a reasonable and rather obvious interpretation," and "[w]e further interpret the statute as requiring the amount of the contribution to be based on the costs of the investigation." *Hunter*, 102 Wn.App. at 639. The Court held there was no abuse of discretion where the trial court imposed a \$2,500 contribution to county drug fund based on the grounds that "substantial amounts of money were necessary to investigate and ultimately charge and convict Mr. Hunter." *Hunter*, 102 Wn.App. at 641. Due process was not violated, the Court concluded, because "[i]mposition of the contribution will be limited to drug-related crimes and the amount will be based on the costs of the investigation." *Hunter*, 102 Wn.App. at 640.

In this case, it is undisputed that Mr. Williams was convicted of a "drug-related crime." However, there is no evidence in the record that the costs imposed were related to the costs of an investigation. There was no "investigation" of a drug related crime such as a controlled buy, use of a confidential informant, or other typical methods of investigation, nor was OPNET involved in the case. Instead, the probable cause statement shows that officers simply arrested Mr. Williams for shoplifting and later happened to

find a small amount of heroin on his person when he was asked to empty his pockets while in a holding cell at the police department. CP 53-54. Therefore, the trial court erred when it imposed contributions to the drug court and to the Olympic Peninsula Narcotic Enforcement Team, which had no involvement in the case.

For these reasons, the assessments for the drug court and OPNET must be vacated, and Mr. Williams' case remanded for correction of the judgment and sentence. *Hathaway*, 161 Wn. App. at 651-653.

2. **THIS COURT SHOULD REVERSE AND REMAND FOR RESENTENCING BECAUSE THE TRIAL COURT FAILED TO DETERMINE MR. WILLIAMS' ABILITY TO PAY DISCRETIONARY LEGAL FINANCIAL OBLIGATIONS.**

In March 2015, the Washington Supreme Court decided *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), in which it held that to comply with RCW 10.01.160, trial courts must conduct an individualized inquiry into the defendant's ability to pay LFOs before imposing them. Under *Blazina*, entry of a sentence with boilerplate language is insufficient; the record must demonstrate that the court considered "the financial resources of the defendant and the nature of the burden that payment of costs will impose," including the defendant's incarceration and other debts. *Blazina*, 182 Wn.2d at 838.

Because the trial court did not follow the requirements of RCW

10.01.160(1), this Court should reverse and remand for resentencing with instructions for the trial court to engage in the analysis set forth in *Blazina*, prior to imposing legal financial obligations on Mr. Williams.

Under RCW 10.01.160(1), a trial court first considers the defendant's specific financial ability to pay. RCW 10.01.160(3) provides:

The court shall not order a defendant to pay costs determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

In *Blazina*, trial counsel did not object to the imposition of LFOs under RCW 10.01.160(3). The Supreme Court held that the failure to comply with the mandatory requirement to determine the defendant's ability to pay before imposing LFOs was error requiring reversal of the imposition of the LFOs until such time as the trial court made the proper determination. *Blazina*, 344 P.3d at 685.

Here, the court used the same type of preprinted boilerplate regarding LFOs in the judgment and sentence that was criticized in *Blazina*. Section 2.5 of the judgment and sentence provides:

Ability to Pay Legal Financial Obligations. Legal Financial Obligations/Restitution. The court has considered the total amount owing, the defendant's present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. (RCW 10.0160).

The court has considered whether the defendant is able-bodied and capable of holding employment. The court finds: That the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein.

CP 22.

In this case, there were no boxes checked in Section 2.5 of the judgment and sentence to indicate that Mr. Williams had a present or future ability to pay. CP 22. Applying the standard set forth in *Blazina*, the trial court failed to conduct the required individualized determination into Mr. Williams' specific financial circumstances in evaluating his likely present and future ability to pay discretionary LFOs such as attorney fees and fines. Instead the court asked Mr. Williams if he was working, where he worked, and how long he had been there. RP (8/18/15) at 6-7. Mr. Williams responded that he worked for a plumbing business and had been there for several months and that he was in the process of "filing for my training card," which would lead to an apprenticeship. RP (8/18/15) at 7. The Court made no inquiry, however, into how much money he expected to make, other expenses, debt, and obligations, whether he had any savings, and other relevant questions. RP (8/18/15) at 6-8.

The trial court ordered a \$500.00 crime victim assessment, \$500.00 for court-appointed attorney fees, a \$200.00 criminal filing fee, a \$1000 .00 drug assessment discussed in Section 1, *supra* and a \$100 DNA fee, for a

total of \$2300.00. CP 26-27.

Under *Blazina*, because the trial court did not inquire into Mr. Williams' ability to pay, this Court should reverse the imposition of LFOs and remand for a determination of Mr. Williams' ability to pay.

E. CONCLUSION

The sentencing court erred when it imposed legal-financial obligations that the Legislature did not authorize. Based on the argument presented herein, Michael Williams respectfully requests this Court to remand for resentencing consistent with the arguments presented herein. In addition, he requests that this Court remand this case for resentencing with an appropriate *Blazina* inquiry.

DATED: December 30, 2015.

Respectfully submitted,

THE TILLER LAW FIRM


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Of Attorneys for Michael Williams

CERTIFICATE OF SERVICE

The undersigned certifies that on December 30, 2015, that this Appellant's Opening Brief was sent by the JIS link to Mr. David Ponzoha, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, a copy was e-mailed to Jesse Espinoza, and mailed by

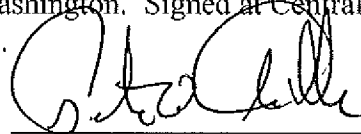
U.S. mail, postage prepaid, to the appellant as follows:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on December 30, 2015.



PETER B. TILLER

APPENDIX A

RCW 9.94A.760

Legal financial obligations.

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a

notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any

time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets.

The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as

provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.

(11)(a) The administrative office of the courts shall mail individualized periodic billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(b) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(c) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(d) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, and who remains under the jurisdiction of the court for payment of legal financial obligations.

RCW 10.01.160

Costs—What constitutes—Payment by defendant—Procedure—
Remission—Medical or mental health treatment or services.

(1) The court may require a defendant to pay costs. Costs may be

imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed two hundred fifty dollars. Costs for administering a pretrial supervision other than a pretrial electronic alcohol monitoring program, drug monitoring program, or 24/7 sobriety program may not exceed one hundred fifty dollars. Costs for preparing and serving a warrant for failure to appear may not exceed one hundred dollars. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not order a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been ordered to pay costs and who is not in

contumacious default in the payment thereof may at any time petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment under RCW 10.01.170.

(5) Except for direct costs relating to evaluating and reporting to the court, prosecutor, or defense counsel regarding a defendant's competency to stand trial as provided in RCW 10.77.060, this section shall not apply to costs related to medical or mental health treatment or services a defendant receives while in custody of the secretary of the department of social and health services or other governmental units. This section shall not prevent the secretary of the department of social and health services or other governmental units from imposing liability and seeking reimbursement from a defendant committed to an appropriate facility as provided in RCW 10.77.084 while criminal proceedings are stayed. This section shall also not prevent governmental units from imposing liability on defendants for costs related to providing medical or mental health treatment while the defendant is in the governmental unit's custody. Medical or mental health treatment and services a defendant receives at a state hospital or other facility are not a cost of prosecution and shall be recoverable under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and any other applicable statute.

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Transmittal Letter

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Court of Appeals Case Number: 47926-5

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